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Attorneys for Defendant
CARMAX AUTO SUPERSTORES CALIFORNIA, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TRINIDAD HERRERA, TAROOB
SIMANI and LUIS BERREGAN,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

CARMAX AUTO SUPERSTORES
CALIFORNIA, LLC, a Virginia limited
liability company; and DOES 1
Through 25,

Defendants.

Case No. 14-cv-00776-MWF-VBK

**DEFENDANT'S NOTICE OF
MOTION AND MOTION TO
COMPEL ARBITRATION
PURSUANT TO THE FEDERAL
ARBITRATION ACT [9 U.S.C. §§ 3
AND 4] AND MOTION TO DISMISS
PURSUANT TO FRCP 12(B)(1),
AND/OR IN THE ALTERNATIVE,
FRCP 12(B)(6).**

Date: May 26 2014
Time: 10:00 a.m.
Location: Courtroom 1600

Action Filed: March 12, 2014
Trial Date: None
Judge: Hon. Michael W.
Fitzgerald
Mag. Judge: Hon. Victor B. Kenton

**TO THE CLERK OF THE COURT, PLAINTIFFS TRINIDAD HERRERA,
TAROOB SLMANI and LUIS BARRAGAN AND THEIR ATTORNEYS OF
RECORD:**

NOTICE IS HEREBY GIVEN that on May 26, 2014, at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Judge Michael W. Fitzgerald, in Courtroom 1600 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Defendant CarMax Auto Superstores California, LLC, will and hereby do move as follows:

1. For an Order, pursuant to the Federal Rule of Civil Procedure 12(b)(1) and/or 12(b)(6) dismissing the entire action for lack of jurisdiction or failure to state a claim upon which relief can be granted, because Plaintiffs agreed to submit any and all claims arising from their employment at CarMax to binding arbitration, and because Plaintiffs' seven claims for relief all arise from his employment at CarMax,

or,

2. For an Order, pursuant to the Federal Arbitration Act (9 U.S.C. § 3); staying the instant action, and compelling Plaintiff to arbitrate his claims for relief against CarMax upon an individualized basis, and dismissing Plaintiffs' class allegations.

This Motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on April 17 and April 21, 2014.

This motion is based upon this Notice, the accompanying Memorandum of Points and Authorities in support thereof, the supporting declarations of Kimberly Ross, Jack Sholkoff and Patricia Jeng, all papers and pleadings filed in this action,

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1 and any other evidence and argument as may be presented in connection with the
2 hearing on the Motion.

3 DATED: April 24, 2014

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

6 By: /s/ Jack S. Sholkoff

Jack S. Sholkoff

Patricia M. Jeng

8 Attorneys for Defendant
9 CARMAX AUTO SUPERSTORES
10 CALIFORNIA, LLC
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